IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 19082 of 2003(V)

PETITIONER:

P.I.JOSEPH,
PADAYATTY HOUSE, PUTHENVELIKKARA, ERNAKULAM DIST.

BY ADV. SRI.M.P.ASHOK KUMAR
SMT.K.P.SREELAJA

RESPONDENTS:

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1. THE PRINCIPAL AGRICULTURAL OFFICER,
CIVIL STATION, KAKKANAD, COCHIN-30.

2. THE ASST. DIRECTOR OF AGRICULTURE,
KRISHI BHAVAN, NEDUMBASSERY, MEKKAD P.O.,
ERNAKULAM.

3. THE AGRICULTURAL OFFICER,
KRISHI BHAVAN, PUTHENVELIKKARA, ERNAKULAM.

4. THE ASSISTANT EXECUTIVE ENGINEER
(AGRICULTURE), VYTTILA, ERNAKULAM.

5. THE SECRETARY,
PUTHENVELIKKARA PANCHAYAT, ERNAKULAM DIST.

6. THE DEPUTY TAHSILDAR,
REVENUE RECOVERY, TALUK OFFICE, N.PARAVOOR.

R1 TO R4 & R6 BY GOVERNMENT PLEADER SMT. SMITHA
R5 BY ADV. SRI.P.L.DEVADAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ONI.A. 5182 OF 2003 IN WPC 19082 OF 2003

DISMISSED

5.12.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 PHOTOCOPY OF THE RELEVANT PAGES OF THE ORDER ISSUED BY THE DIRECTOR OF AGRICULTURE, TRIVANDRUM ON 30.7.94

EXT.P2 PHOTOCOPY OF THE SANCTION ORDER DATED 10.1.1997ISSUED BY THE FIRST RESPONDENT.

EXT.P3 PHOTOCOPY OF THE REVISED ESTIMATE ISSUED BY THE 1ST RESPONDENT.

EXT.P4 PHOTOCOPY OF THE REPORT DATED 5.11.1997

EXT.P4(A) PHOTOCOPY OF THE REPORT DATED 4.10.1997

EXT.P5 PHOTOCOPY OF THE RELEVANT PAGE OF THEMINUTES DATED NIL.

EXT.P6 PHOTOCOPY OF THE REPRESENTATION DATED 31.3.2000

EXT.P7PHOTOCOPY OF THE MINUTES DATED NIL

EXT.P8 PHOTOCOPY OF THE NOTICE ISSUED BY THE PRESIDENT OF PUTHENVELIKKARA GRAMA PANCHAYATAND AGRICULTURE OFFICER DATED NIL.

EXT.P9 PHOTOCOPY OF THE INAGURATION NOTICE PUBLISHED BY ASST. DIRECTOR OF AGRICULTURE ON 1.3.2001

EXT.P10 PHOTOCOPY OF THE INVOICE SUBMITTED BY THE PETITIONER DATED NIL.

EXT.P11 PHOTOCOPY OF THE LETTER DATED 5.5.2003 ISSUED BY THE AGRICULTURE OFFICER PUTHENVELIKKARA.

EXT.P12 PHOTOCOPY OF THE ITEM WISE REPLY SUBMITTED BY THE PETITIONER DATED 30.5.2003

EXT.P13 PHOTOCOPY OF THE REPLY SUBMITTED BY THE PETITIONER DATED 12.12.2002

EXT.P14 PHOTOCOPY OF THE NOTICE DATED 16.1.2003

EXT.P15 PHOTOCOPY OF THE REPLYDATED 30.1.2003

EXT.P16 PHOTOCOPY OF THE RR NOTICE DATED 26.5.2003

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 19082 OF 2003

Dated this the 5th day of December, 2007

JUDGMENT

Petitioner, convener of a Comprehensive Coconut Development Programme, has filed this Writ Petition challenging the demand and proceedings for recovery of an amount of Rs. 12,49,811/- being the excess received by the petitioner over the value of work executed by him. Counsel for the petitioner contended that no proper valuation was done and petitioner has invested full advance received. However, Government Pleader submitted that petitioner was paid an amount Rs. 29,21,500/-. As against this, Ext.P1, which is a detailed valuation containing 22 pages, amount invested by the petitioner is only Rs. 19,66,693/-. The amount sought to be recovered is the actual amount misappropriated or retained by the petitioner, is argument of Government Pleader. Petitioner's case is that payments were made in a phased manner depending upon the progress of completion of work. However, Govt. Pleader pointed out that petitioner, along with others involved, including the Engineer, colluded and swindled the money,

which led to vigilance enquiry. It is submitted that Vigilance have completed their report and case B.C.No. 11 of 2007 is filed before the Special Judge (Enquiry Commission), Vigilance Court, Trichur wherein petitioner is stated to be an accused. When the case is pending before the Vigilance Court, I do not think it fit for this Court to decide the question on valuation. However, on going through Ext.P10, I find each and every item of work is measured and valued. In view of the prima facie case established by the Vigilance and the details in the valuation report, I feel W.P. can be disposed of without going into merits by directing part payment and ordering security for the balance amount. In the circumstances, W.P. is disposed of directing the petitioner to deposit Rs. 5 lakhs and furnish bank guarantee for the balance amount within one month from the date of receipt of a copy of this judgment. As and when Vigilance case is over, petitioner can ask for variation or modification of valuation which should be done by the concerned authority based on judgment of the Vigilance Court. Encashment of bank guarantee and appropriation of the amount deposited by the petitioner will be subject to further adjudication based

on findings of the Enquiry Judge. If petitioner cannot furnish bank guarantee petitioner can deposit title deeds of the property of the value of the balance amount and execute a bond to the satisfaction of the Tahsildar. If Rs. 5 lakhs is not deposited and security is not furnished as above, respondents are free to proceed for recovery of full amount.

(C.N. RAMACHANDRAN NAIR)
Judge